



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Mr. Charles Griffith, III
Deputy City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR95-1336

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25312.

The City of Austin (the "city") received a written request from the Austin Independent School District (the "district") for police department records pertaining to an investigation into a district high school teacher's possible sexual involvement with a high school student.¹ You explain that the investigation into the allegation was eventually closed because the allegation was determined to be "unfounded"; the city, therefore, does not assert any law enforcement or litigation interests in these records. However, you contend that the information at issue implicates the privacy interests of third parties and, thus, comes under the protection of section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 applies to information considered private under common-law privacy and incorporates specific statutes that protect information from disclosure.

¹This office has stated on several occasions that the public policy in Texas encourages an unrestricted flow of information between state agencies and that information may be transferred between governmental agencies without destroying its confidential character. "[A]n interagency sharing of the data, in carrying out a related administrative aim, could not be considered as a public disclosure of the information." Attorney General Opinion M-713 (1970) at 3. Although there exists a general policy that governmental entities share information, no authority, statutory or otherwise, mandates that they do so. Accordingly, we address your request for an open records decision solely in terms of whether the Open Records Act *requires* the city to release the requested information to the district. The city *may* release most of the requested information to the district without violating the Open Records Act.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 677, 682-83 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information from disclosure if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We agree that portions of the police report at issue implicate the privacy interests of certain individuals; however, we do not include the teacher who was the subject of the investigation as being among those individuals. Rarely will information pertaining to public employment come under the protection of common-law privacy. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The information at issue pertains solely to the teacher's actions while she was employed by the district and, as such, cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 405 (1983).

We also note that one of the individuals interviewed during the investigation has voluntarily provided a detailed statement to the district that includes some of the "highly intimate or embarrassing information" contained in the police report. To the extent that sensitive information contained in the statement also appears in the police report, this office believes that this individual has waived any privacy interest he may have had in the information, at least with regard to the district.² However, we have marked the portions of the police report that consist of other intimate information not found in the statement that the city must withhold to protect both the common-law and statutory privacy of this individual and other third parties.

You also contend that certain portions of the report are made confidential by section 19A of article 4413(29cc), V.T.C.S., and thus must be withheld under section 552.101 of the Government Code. Section 19A of article 4413(29cc), which governs the release of polygraph examinations, reads in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person . . . or governmental agency that requested the examination;

²We do not address here the extent to which this waiver affects the future disclosure of this information to other individuals or to the general public.

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) *The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.*
[Emphasis added.]

The district is not among those listed as having a right of access to the polygraph information at issue; consequently, the city is barred by statute from releasing to the district either the polygraph examination results or information pertaining to the examination questions. *See* Open Records Decision No. 430 (1985). We agree that the information you have marked as coming under the protection of article 4413(29cc) must be withheld from the district. However, all remaining information contained in the police report, except as discussed above, must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent and the last name "DeHay" following in a similar style.

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 25312

Enclosures: Marked documents

cc: Dr. Ann B. Fields
Director of Employee Relations
Austin Independent School District
111 W. 6th Street
Austin, Texas 78703
(w/o enclosures)